

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. \_\_\_\_\_

STATE OF INDIANA, )

Plaintiff, )

v. )

BLUEGREEN VACATIONS )  
UNLIMITED, INC., )

Defendant. )

49C010603PL0011800

**FILED**

MAR 21 2006

*Donna Ann Schaller*  
CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General David A. Paetzmann, petitions the Court pursuant to Indiana's Promotional Gifts and Contests Act, Indiana Code § 24-8-1-1 *et seq.* and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and all other appropriate relief.

**PARTIES**

1. Plaintiff, State of Indiana, is an enforcing authority of Ind. Code § 24-5-0.5-1 *et seq.*, and Ind. Code § 24-8-1-1 *et seq.*, and is authorized to bring this action to seek injunctive relief, consumer restitution, civil penalties, costs, and other relief.

2. Defendant, Bluegreen Vacations Unlimited, Inc. ("Bluegreen"), is a Florida corporation with its principal place of business at 4960 Blue Lake Drive, Boca Raton, Florida 33431, and maintains an office in the State of Indiana at 3500 W. Depauw Blvd., Suite 2060, Indianapolis, Indiana.

## FACTS

3. At all relevant times, Bluegreen has solicited Indiana consumers to purchase time share ownership interests.

4. To attract prospects to Bluegreen's time share sales presentations, Bluegreen has engaged in direct mail solicitation of Indiana consumers.

5. Since at least early 2000, Bluegreen has mailed solicitations to Indiana consumers of varied content and format, stating that the recipients had won or may have won a prize, or had been selected to receive a gift.

5. On January 10, 2001, Bluegreen entered into an Assurance of Voluntary Compliance with the Indiana Attorney General's Office to resolve litigation in State of Indiana v. Bluegreen Vacations Unlimited, Inc., Marion Superior Court Cause No. 49D05-0008-CP-001204, in which Bluegreen agreed to comply with Indiana's Promotional Gifts and Contests Act when soliciting Indiana consumers.

6. During 2004, Bluegreen mailed post card solicitations to Indiana consumers, including but not limited to Joan Kearnaghan of Noblesville, Indiana, stating that the recipient had been selected to receive a gift of a Carnival "Fun Ship" cruise ("Carnival cruise solicitation"). A true and accurate exemplary copy of the Carnival cruise solicitation is attached and incorporated by reference as Exhibit "A."

7. The small print on the reverse side of the Carnival cruise solicitation includes the following statements: "To qualify you must have a minimum annual household income of \$35,000, attend a 90-minute sales tour presented in English, and present a major credit card and legit picture identification at check-in. If married, cohabiting or engaged both individuals must

tour together...No travel during peak and holiday periods. Passengers must be over 21 and are solely responsible for all taxes, port charges, and additional expenses.”

8. The Carnival cruise solicitation does not conspicuously disclose, in at least 10 point boldface type, that recipients are required to attend a sales presentation in order to receive the gift.

9. The Carnival cruise solicitation does not clearly disclose, in at least 10 point boldface type, all additional costs associated with the Carnival cruise gift.

10. The Carnival cruise solicitation does not clearly disclose, in at least 10 point boldface type, the limitations on eligibility for receiving the gift.

### **COUNT I**

#### **VIOLATIONS OF INDIANA’S PROMOTIONAL GIFTS AND CONTESTS ACT**

11. Bluegreen is a “promoter” as defined by Ind. Code § 24-8-2-4.

12. Bluegreen’s Carnival cruise solicitation is a “promotion” as defined by Ind. Code § 24-8-2-5.

13. The Carnival cruise gift referenced in Bluegreen’s Carnival cruise solicitation is a “prize” as defined by Ind. Code § 24-8-2-3.

14. Bluegreen violated Ind. Code § 24-8-3-3 by failing to state a verifiable retail value for the Carnival cruise gift.

15. Bluegreen violated Ind. Code § 24-8-3-6 by failing to conspicuously disclose in at least 10 point boldface type that the consumer must attend a sales presentation in order to receive the Carnival cruise gift.

16. Bluegreen violated Ind. Code § 24-8-3-7(b) by failing to accurately and properly disclose the amount the consumer must pay in order to receive the Carnival cruise.

17. Bluegreen violated § 24-8-3-7(c) by failing to disclose in at least 10 point boldface type that the consumer must pay taxes, port charges and additional expenses associated with the Carnival cruise .

18. Bluegreen violated Ind. Code § 24-8-3-8 by failing to clearly disclose in at least 10 point boldface type the eligibility limitations on persons seeking to receive the Carnival cruise gift.

19. Pursuant to Ind. Code § 24-8-6-3, Bluegreen's violations of Indiana's Promotional Gifts and Contests Act constitute deceptive acts and are subject to the penalties listed in Ind. Code § 24-5-0.5.

20. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code § 24-5-0.5-1 *et seq.*, and Ind. Code § 24-8-1-1 *et seq.*

## **COUNT II**

### **KNOWING AND INTENTIONAL VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT**

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above.

22. The misrepresentations and deceptive acts set forth above were committed by Defendant with knowledge and intent to deceive.

## **RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter judgment against the Defendant, Bluegreen Vacations Unlimited, Inc., and order the following relief:

a. permanently enjoining Bluegreen, its agents, representatives, employees, successors, assigns, and any other person acting on behalf of Bluegreen from mailing or otherwise

delivering promotional notices to Indiana consumers that do not conspicuously disclose, in at least 10 point boldface type, that the consumer must attend a sales presentation in order to receive the offered gift, in violation of Ind. Code § 24-8-3-6; from mailing or otherwise delivering promotional notices to Indiana consumers that do not disclose, in at least 10 point boldface type, that the consumer must pay taxes, port charges and other expenses in conjunction with the offered gift, in violation of Ind. Code § 24-8-3-7(c); and from mailing or otherwise delivering promotional notices to Indiana consumers that do not clearly disclose, in at least 10 point bold type, the eligibility limitations on persons seeking to claim their gift, in violation of Ind. Code § 24-8-3-8;

b. Restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2) in an amount to be determined at trial;

c: costs pursuant to Ind. Code § 24-5-0.5-4(c)(2), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

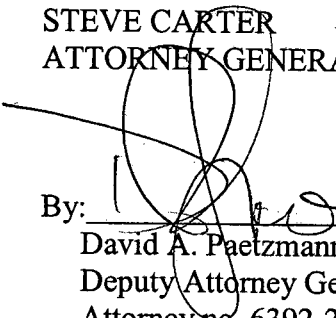
d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Promotional Gifts and Contests Act and Deceptive Consumer Sales Act, in an amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Promotional Gifts and Contests Act and Deceptive Consumer Sales Act, in an amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER  
ATTORNEY GENERAL OF INDIANA

By:   
David A. Paetzmann  
Deputy Attorney General  
Attorney no. 6392-23

Office of the Attorney General  
Indiana Government Center South, 5th floor  
402 West Washington Street  
Indianapolis, IN 46204  
(317) 232-3442

Exhibit 1

Bluegreen Vacation Club  
Pyramid Building #2  
3600 W. De Pauw Blvd.  
Indianapolis, IN 46268

VCCODE: BIFF38A

PRESORTED  
FIRST CLASS  
US POSTAGE  
PAID  
MINNEAPOLIS, MN  
PERMIT NO. 39

Mr./Mrs. Kearnaghan,

We are anxious to confirm your status as a gift recipient. The Kearnaghan Family of Noblesville, IN has been selected to receive a Carnival "Fun Ship" Cruise for five (5) days/four (4) nights for two (2) adults to Key West, Florida and Cozumel, Mexico, or Catalina Islands and Ensenada, Mexico (your choice). Verifiable Retail Value \$1,698.00. All meals, on board activities and entertainment are included. All that is required is that you attend a sales presentation about our vacation ownership program, which lasts approximately 90 minutes (see details of participation below). Call immediately. This offer expires 21 days from receipt.

**Toll Free 1-800-291-2520**

Monday through Friday 10:30 a.m. until 8:30 p.m. and Saturday 11 a.m. until 3 p.m.

Call within 48 hours and you will also receive a certificate good for \$600.00 in Air Checks (airline discount vouchers). Verifiable Retail Value \$600.00.

**THIS ADVERTISING MATERIAL IS BEING USED FOR THE PURPOSE OF SOLICITING SALES OF VACATION TIMESHARING PLANS.**

**Details of participation:**

No Purchase Necessary. Appointments required. To qualify you must have a minimum annual household income of \$30,000, submit a 30 minute sales tour presented in English, and present a major credit card and legal picture identification of check-in. If married, cohabiting or engaged, both individuals must tour together. Bluegreen reserves the right to substitute gifts of equal or greater value where allowed. Offer non-transferable and can't be used with other offers. One offer per family, no groups. Anyone who has toured Bluegreen Vacation Club within the past 15 months is ineligible. Bluegreen Vacations Unlimited, Inc., a wholly-owned subsidiary of Bluegreen Corporation, 4900 Conference Way N., Suite 100, Boca Raton, FL 33431 is the promoter. Confirmation letter and on-line arrival required to claim gift. Transportation before departure: ports (Tampa, FL, Galveston, TX, Los Angeles, CA) not included. Restrictions apply to cruise and air check certificates. Subject to availability. See certificate for details. No travel during peak and holiday periods. Passengers must be over 21 and are solely responsible for all taxes, port charges and additional expenses. Unclaimed gifts will not be awarded. Not valid in states where prohibited by law.

\*\*\*\*\*AUTO\*\*5-DIGIT 46038

Mr./Mrs. Joan Kearnaghan

